

5. Defendants admit that Plaintiff is a former National Football League player who played for the Chicago Bears, the Tampa Bay Buccaneers, and the San Diego Chargers, and that Plaintiff's contract with the San Diego Chargers covering the 1989, 1990, and 1991 football seasons was terminated in 1989. Defendants deny each and every remaining allegation in Paragraph 5. To the extent Plaintiff relies upon documents contained in the administrative record to support his claim(s), Defendants deny Plaintiff's characterization of those documents, and instead rely upon those documents to speak for themselves. To the extent Plaintiff relies upon documents outside the Administrative Record to support his claim(s), Defendants reserve the right to move the Court to strike those documents and any allegations based upon such documents.

6. Defendants admit that Plaintiff has at various times applied for, and received, disability benefits provided under the Bert Bell/Pete Rozelle NFL Player Retirement Plan ("Retirement Plan") and the NFL Player Disability & Neurocognitive Benefit Plan ("Disability Plan" and, together with the Retirement Plan, "Plans"). Defendants deny each and every remaining allegation in Paragraph 6. To the extent Plaintiff relies upon documents contained in the Administrative Record to support his claim(s), Defendants deny Plaintiff's characterization of those documents, and instead rely upon those documents to speak for themselves. To the extent Plaintiff relies upon documents outside the Administrative Record to support his claim(s), Defendants reserve the right to move the Court to strike those documents and any allegations based upon such documents. To the extent Plaintiff relies upon the terms of the Plans to support his

claim(s), Defendants deny Plaintiff's characterization of the Plans' terms, and instead rely upon the terms of the Plans to speak for themselves.

7. Defendants admit that initial claims for benefits under the Retirement Plan are decided by the Disability Initial Claims Committee, and appeals of benefit denials are decided by the Retirement Board. Defendants deny each and every remaining allegation in Paragraph 7. To the extent Plaintiff relies upon documents contained in the Administrative Record to support his claim(s), Defendants deny Plaintiff's characterization of those documents, and instead rely upon those documents to speak for themselves. To the extent Plaintiff relies upon documents outside the Administrative Record to support his claim(s), Defendants reserve the right to move the Court to strike those documents and any allegations based upon such documents. To the extent Plaintiff relies upon the terms of the Retirement Plan to support his claim(s), Defendants deny Plaintiff's characterization of the Retirement Plan's terms, and instead rely upon the terms of the Retirement Plan to speak for themselves.

8. Defendants deny each and every allegation in Paragraph 8. To the extent Plaintiff relies upon the terms of the Retirement Plan or the Disability Plan to support his claim(s), Defendants deny Plaintiff's characterization of the Retirement Plan's and Disability Plan's terms, and instead rely upon the terms of those Plans to speak for themselves.

9. Defendants admit that Plaintiff has at various times applied for, and received, disability benefits provided by the Retirement Plan, including line of duty ("LOD") benefits. Defendants further admit that Plaintiff was evaluated by Hugh S.

Unger, M.D. in December 1991. Defendants deny each and every remaining allegation in Paragraph 9. To the extent Plaintiff relies upon documents contained in the Administrative Record to support his claim(s), Defendants deny Plaintiff's characterization of those documents, and instead rely upon those documents to speak for themselves. To the extent Plaintiff relies upon documents outside the Administrative Record to support his claim(s), Defendants reserve the right to move the Court to strike those documents and any allegations based upon such documents.

10. Denied. To the extent Plaintiff relies upon documents contained in the Administrative Record to support his claim(s), Defendants deny Plaintiff's characterization of those documents, and instead rely upon those documents to speak for themselves. To the extent Plaintiff relies upon documents outside the Administrative Record to support his claim(s), Defendants reserve the right to move the Court to strike those documents and any allegations based upon such documents.

11. Defendants admit that the language quoted by Plaintiff in the last sentence of Paragraph 11 appears in a report signed by Hugh S. Unger, M.D. dated December 10, 1991. Defendants deny each and every remaining allegation in Paragraph 11. To the extent Plaintiff relies upon documents contained in the Administrative Record to support his claim(s), Defendants deny Plaintiff's characterization of those documents, and instead rely upon those documents to speak for themselves. To the extent Plaintiff relies upon documents outside the Administrative Record to support his claim(s), Defendants reserve the right to move the Court to strike those documents and any allegations based upon such documents.

12. Defendants admit that on or about January 16, 1992, the Board awarded Plaintiff LOD benefits, and that thereafter Plaintiff was periodically examined by Dr. Unger. Defendants deny each and every remaining allegation in Paragraph 12. To the extent Plaintiff relies upon documents contained in the Administrative Record to support his claim(s), Defendants deny Plaintiff's characterization of those documents, and instead rely upon those documents to speak for themselves. To the extent Plaintiff relies upon documents outside the Administrative Record to support his claim(s), Defendants reserve the right to move the Court to strike those documents and any allegations based upon such documents.

13. Defendants admit that Plaintiff was awarded LOD benefits effective January 1, 1992 and was paid LOD benefits through December 1997. Defendants deny each and every remaining allegation in Paragraph 13. To the extent Plaintiff relies upon documents contained in the Administrative Record to support his claim(s), Defendants deny Plaintiff's characterization of those documents, and instead rely upon those documents to speak for themselves. To the extent Plaintiff relies upon documents outside the Administrative Record to support his claim(s), Defendants reserve the right to move the Court to strike those documents and any allegations based upon such documents. To the extent Plaintiff relies upon the terms of the Retirement Plan to support his claim(s), Defendants deny Plaintiff's characterization of the Retirement Plan's terms, and instead rely upon the terms of the Retirement Plan to speak for themselves.

14. Defendants admit that in 1996 Plaintiff requested that his LOD benefits be reclassified to total and permanent disability benefits. Defendants deny each and every

remaining allegation in Paragraph 14. To the extent Plaintiff relies upon documents contained in the Administrative Record to support his claim(s), Defendants deny Plaintiff's characterization of those documents, and instead rely upon those documents to speak for themselves. To the extent Plaintiff relies upon documents outside the Administrative Record to support his claim(s), Defendants reserve the right to move the Court to strike those documents and any allegations based upon such documents.

15. Defendants admit, upon information and belief, that on May 7, 2002, Plaintiff was in an automobile accident. Defendants deny each and every remaining allegation in Paragraph 15. To the extent Plaintiff relies upon documents contained in the Administrative Record to support his claim(s), Defendants deny Plaintiff's characterization of those documents, and instead rely upon those documents to speak for themselves. To the extent Plaintiff relies upon documents outside the Administrative Record to support his claim(s), Defendants reserve the right to move the Court to strike those documents and any allegations based upon such documents.

16. Defendants admit that Plaintiff applied for total and permanent disability benefits in September 2003, and that in the application, Plaintiff listed certain conditions. Defendants deny each and every remaining allegation in Paragraph 16. To the extent Plaintiff relies upon documents contained in the Administrative Record to support his claim(s), Defendants deny Plaintiff's characterization of those documents, and instead rely upon those documents to speak for themselves. To the extent Plaintiff relies upon documents outside the Administrative Record to support his claim(s), Defendants reserve

the right to move the Court to strike those documents and any allegations based upon such documents.

17. Defendants admit that the language quoted by Plaintiff in Paragraph 17 appears in Dr. Selesnick's report dated December 26, 2003. Defendants deny each and every remaining allegation in Paragraph 17. To the extent Plaintiff relies upon documents contained in the Administrative Record to support his claim(s), Defendants deny Plaintiff's characterization of those documents, and instead rely upon those documents to speak for themselves. To the extent Plaintiff relies upon documents outside the Administrative Record to support his claim(s), Defendants reserve the right to move the Court to strike those documents and any allegations based upon such documents.

18. Defendants admit that on March 3, 2004 the Board awarded Plaintiff, effective January 1, 2004, Inactive T&P benefits under the Retirement Plan. Defendants further admit that Plaintiff appealed the Board's award. Defendants deny each and every remaining allegation in Paragraph 18. To the extent Plaintiff relies upon documents contained in the Administrative Record to support his claim(s), Defendants deny Plaintiff's characterization of those documents, and instead rely upon those documents to speak for themselves. To the extent Plaintiff relies upon documents outside the Administrative Record to support his claim(s), Defendants reserve the right to move the Court to strike those documents and any allegations based upon such documents.

19. Defendants admit that at the Disability Initial Claims Committee's ("DICC") April 7, 2004 meeting, the DICC determined Plaintiff was entitled to Football Degenerative disability benefits and awarded Plaintiff such benefits effective January 1,

2004. Defendants deny each and every remaining allegation in Paragraph 19. To the extent Plaintiff relies upon documents contained in the Administrative Record to support his claim(s), Defendants deny Plaintiff's characterization of those documents, and instead rely upon those documents to speak for themselves. To the extent Plaintiff relies upon documents outside the Administrative Record to support his claim(s), Defendants reserve the right to move the Court to strike those documents and any allegations based upon such documents.

20. Defendants admit that a participant receiving T&P benefits under the Plan is required to submit to periodic physical examinations for the purpose of reexamining the participant's condition in order to continue the participant's T&P benefits. Defendants further admit that Plaintiff was periodically examined by plan neutral physicians. Defendants deny each and every remaining allegation in Paragraph 20. To the extent Plaintiff relies upon documents contained in the Administrative Record to support his claim(s), Defendants deny Plaintiff's characterization of those documents, and instead rely upon those documents to speak for themselves. To the extent Plaintiff relies upon documents outside the Administrative Record to support his claim(s), Defendants reserve the right to move the Court to strike those documents and any allegations based upon such documents. To the extent Plaintiff relies upon the terms of the Retirement Plan to support his claim(s), Defendants deny Plaintiff's characterization of the Retirement Plan's terms, and instead rely upon the terms of the Retirement Plan to speak for themselves.

21. Defendants admit that at its April 19, 2011 meeting, the DICC deadlocked on whether Plaintiff was still eligible for T&P benefits, and that such deadlock resulted in

a deemed denial of continuation of Plaintiff's T&P benefits. Defendants deny each and every allegation remaining in Paragraph 21. To the extent Plaintiff relies upon documents contained in the Administrative Record to support his claim(s), Defendants deny Plaintiff's characterization of those documents, and instead rely upon those documents to speak for themselves. To the extent Plaintiff relies upon documents outside the Administrative Record to support his claim(s), Defendants reserve the right to move the Court to strike those documents and any allegations based upon such. To the extent Plaintiff relies upon the terms of the Retirement Plan to support his claim(s), Defendants deny Plaintiff's characterization of the Retirement Plan's terms, and instead rely upon the terms of the Retirement Plan to speak for themselves.

22. Defendants admit that in May 2011, Plaintiff was awarded Social Security disability benefits. Defendants deny each and every allegation remaining in Paragraph 22. To the extent Plaintiff relies upon documents contained in the Administrative Record to support his claim(s), Defendants deny Plaintiff's characterization of those documents, and instead rely upon those documents to speak for themselves. To the extent Plaintiff relies upon documents outside the Administrative Record to support his claim(s), Defendants reserve the right to move the Court to strike those documents and any allegations based upon such documents.

23. Defendants admit that Plaintiff appealed the DICC's April 19, 2011 denial of the continuation of Plaintiff's T&P benefits. Defendant denies each and every remaining allegation in Paragraph 23. To the extent Plaintiff relies upon documents contained in the Administrative Record to support his claim(s), Defendants deny

Plaintiff's characterization of those documents, and instead rely upon those documents to speak for themselves. To the extent Plaintiff relies upon documents outside the Administrative Record to support his claim(s), Defendants reserve the right to move the Court to strike those documents and any allegations based upon such documents. To the extent Plaintiff relies upon the terms of the Retirement Plan to support his claim(s), Defendants deny Plaintiff's characterization of the Retirement Plan's terms, and instead rely upon the terms of the Retirement Plan to speak for themselves.

24. Defendants admit that, effective September 1, 2011, all prior awards of "Football Degenerative" T&P benefits were reclassified as "Inactive A" benefits, and all awards of "Inactive" were reclassified to "Inactive B". Defendants further admit that Plaintiff received Inactive A T&P benefits from September through November 2011. Defendants deny each and every remaining allegation in Paragraph 24. To the extent Plaintiff relies upon documents contained in the Administrative Record to support his claim(s), Defendants deny Plaintiff's characterization of those documents, and instead rely upon those documents to speak for themselves. To the extent Plaintiff relies upon documents outside the Administrative Record to support his claim(s), Defendants reserve the right to move the Court to strike those documents and any allegations based upon such documents. To the extent Plaintiff relies upon the terms of the Retirement Plan to support his claim(s), Defendants deny Plaintiff's characterization of the Retirement Plan's terms, and instead rely upon the terms of the Retirement Plan to speak for themselves.

25. Defendants admit that on November 16, 2011, the Board denied Plaintiff's appeal of the DICC's termination of Plaintiff's T&P benefits. Defendants further admit

that the Board denied Plaintiff's appeal based on, *inter alia*, a review of Plaintiff's 2009 income tax return, and the Board noted that there was no evidence that Plaintiff was receiving Social Security disability benefits. Defendants deny each and every remaining allegation in Paragraph 25. To the extent Plaintiff relies upon documents contained in the Administrative Record to support his claim(s), Defendants deny Plaintiff's characterization of those documents, and instead rely upon those documents to speak for themselves. To the extent Plaintiff relies upon documents outside the Administrative Record to support his claim(s), Defendants reserve the right to move the Court to strike those documents and any allegations based upon such documents.

26. Defendants admit that Plaintiff reapplied for T&P benefits under the Plan in February 2012. Defendants further admit that the DICC denied Plaintiff's application for T&P benefits in February 2012 and notified Plaintiff of the DICC's decision by letter in March 2012. To the extent Plaintiff relies upon documents contained in the Administrative Record to support his claim(s), Defendants deny Plaintiff's characterization of those documents, and instead rely upon those documents to speak for themselves. To the extent Plaintiff relies upon documents outside the Administrative Record to support his claim(s), Defendants reserve the right to move the Court to strike those documents and any allegations based upon such documents.

27. Defendants admit that Plaintiff, through counsel, appealed the Board's denial of denial of Plaintiff's application for T&P benefits. Defendants further admit that in November 2012, the Board awarded Plaintiff Inactive B T&P benefits effective December 1, 2011. Defendants deny each and every remaining allegation in Paragraph

27. To the extent Plaintiff relies upon documents contained in the Administrative Record to support his claim(s), Defendants deny Plaintiff's characterization of those documents, and instead rely upon those documents to speak for themselves. To the extent Plaintiff relies upon documents outside the Administrative Record to support his claim(s), Defendants reserve the right to move the Court to strike those documents and any allegations based upon such documents.

28. Defendants admit that Plaintiff appealed the Board's award of Inactive B T&P benefits and sought reclassification of his T&P benefits to the Inactive A category. Defendants further admit that in May 2013, the Board denied Plaintiff's appeal to reclassify his disability benefits to Inactive A T&P benefits. Defendants further admit that Plaintiff requested reconsideration and in November 2013 the Board temporarily reclassified, as of December 1, 2013, Plaintiff's disability benefits to Inactive A T&P benefits, subject to Plaintiff providing, or assisting Defendants in obtaining, certain information. Defendants further admit that Plaintiff received Inactive B T&P benefits through February 2015. Defendants deny each and every remaining allegation in Paragraph 28. To the extent Plaintiff relies upon documents contained in the Administrative Record to support his claim(s), Defendants deny Plaintiff's characterization of those documents, and instead rely upon those documents to speak for themselves. To the extent Plaintiff relies upon documents outside the Administrative Record to support his claim(s), Defendants reserve the right to move the Court to strike those documents and any allegations based upon such documents.

29. Defendants admit that on February 26, 2015, the Board suspended Plaintiff's Inactive B T&P benefits due to Plaintiff's failure to comply with the Board's previous requests for information. Defendants further admit that the Board subsequently received the requested information. Defendants further admit that in July 2015, the Board voted to reclassify Plaintiff's T&P benefits from Inactive B to Inactive A, effective December 1, 2013. Defendants deny each and every remaining allegation in Paragraph 29. To the extent Plaintiff relies upon documents contained in the Administrative Record to support his claim(s), Defendants deny Plaintiff's characterization of those documents, and instead rely upon those documents to speak for themselves. To the extent Plaintiff relies upon documents outside the Administrative Record to support his claim(s), Defendants reserve the right to move the Court to strike those documents and any allegations based upon such documents.

30. Defendants admit that Plaintiff, through counsel, requested that Plaintiff's Inactive A T&P benefits be reinstated effective December 2011, and sought payment of the difference between Inactive B and Inactive A benefits for the period from December 2011 to November 2013. Defendants deny each and every remaining allegation in Paragraph 30. To the extent Plaintiff relies upon documents contained in the Administrative Record to support his claim(s), Defendants deny Plaintiff's characterization of those documents, and instead rely upon those documents to speak for themselves. To the extent Plaintiff relies upon documents outside the Administrative Record to support his claim(s), Defendants reserve the right to move the Court to strike those documents and any allegations based upon such documents.

31. Defendants admit that by letter dated August 30, 2017, the Board notified Plaintiff that it determined that he was never entitled to Football Degenerative/Inactive A benefits, that it reclassified his benefits from Inactive A to Inactive B, and suspended his Inactive B benefits to partially recover the overpayment to Plaintiff. Defendants deny each and every remaining allegation in Paragraph 31. To the extent Plaintiff relies upon documents contained in the Administrative Record to support his claim(s), Defendants deny Plaintiff's characterization of those documents, and instead rely upon those documents to speak for themselves. To the extent Plaintiff relies upon documents outside the Administrative Record to support his claim(s), Defendants reserve the right to move the Court to strike those documents and any allegations based upon such documents.

32. Defendants admit that it notified Plaintiff that the Board received, as part of Plaintiff's Social Security file, a full copy of Dr. Janecki's August 2003 report, which indicated Plaintiff's injuries were a direct result of a 2002 car accident. Defendants further admit the Board notified Plaintiff that his application was intentionally and materially incomplete and inaccurate. Defendants further admit that the Board notified Plaintiff of its determination that the 2002 car accident proximately caused the injuries identified in Plaintiff's disability benefits application. Defendants deny each and every remaining allegation in Paragraph 32. To the extent Plaintiff relies upon documents contained in the Administrative Record to support his claim(s), Defendants deny Plaintiff's characterization of those documents, and instead rely upon those documents to speak for themselves. To the extent Plaintiff relies upon documents outside the Administrative

Record to support his claim(s), Defendants reserve the right to move the Court to strike those documents and any allegations based upon such documents.

33. Defendants admit that Plaintiff appealed the Board's August 2017 decision. Defendants deny each and every remaining allegation in Paragraph 33. To the extent Plaintiff relies upon documents contained in the Administrative Record to support his claim(s), Defendants deny Plaintiff's characterization of those documents, and instead rely upon those documents to speak for themselves. To the extent Plaintiff relies upon documents outside the Administrative Record to support his claim(s), Defendants reserve the right to move the Court to strike those documents and any allegations based upon such documents.

34. Admitted.

35. Admitted.

36. Paragraph 36 describes the relief that Plaintiff seeks, and it does not require a response. To the extent a response is required, Defendants deny each and every allegation in Paragraph 36.

37. Denied. To the extent Plaintiff relies upon documents contained in the Administrative Record to support his claim(s), Defendants deny Plaintiff's characterization of those documents, and instead rely upon those documents to speak for themselves. To the extent Plaintiff relies upon documents outside the Administrative Record to support his claim(s), Defendants reserve the right to move the Court to strike those documents and any allegations based upon such documents.

38. Denied. To the extent Plaintiff relies upon documents contained in the Administrative Record to support his claim(s), Defendants deny Plaintiff's characterization of those documents, and instead rely upon those documents to speak for themselves. To the extent Plaintiff relies upon documents outside the Administrative Record to support his claim(s), Defendants reserve the right to move the Court to strike those documents and any allegations based upon such documents. To the extent Plaintiff relies upon the terms of the Retirement Plan to support his claim(s), Defendants deny Plaintiff's characterization of the Retirement Plan's terms, and instead rely upon the terms of the Retirement Plan to speak for themselves.

39-53. Defendants have moved to dismiss count three of Plaintiff's First Amended Complaint for failure to state a claim upon which relief can be granted. Defendants reserve the right to amend this Answer to respond to the allegations contained in Paragraphs 39-53 as required by the Court and/or the Federal Rules of Civil Procedure.

54. Paragraph 54 describes the relief that Plaintiff seeks, and it does not require a response. To the extent a response is required, Defendants deny each and every allegation in Paragraph 54.

55. Paragraph 55 describes the relief that Plaintiff seeks, and it does not require a response. To the extent a response is required, Defendants deny each and every allegation in Paragraph 55.

56. Paragraph 56 describes the relief that Plaintiff seeks, and it does not require a response. To the extent a response is required, Defendants deny each and every allegation in Paragraph 56.

57. Paragraph 57 describes the relief that Plaintiff seeks, and it does not require a response. To the extent a response is required, Defendants deny each and every allegation in Paragraph 57.

58. Paragraph 58 describes the relief that Plaintiff seeks, and it does not require a response. To the extent a response is required, Defendants deny each and every allegation in Paragraph 58.

In addition to the responses set forth in paragraphs 1 through 58 of this Answer, Defendants deny each and every allegation of fact and conclusion of law in the First Amended Complaint not otherwise specifically admitted in this Answer, and Defendants deny that Plaintiff is entitled to the relief demanded in the First Amended Complaint or to any relief whatsoever.

FIRST AFFIRMATIVE DEFENSE

The First Amended Complaint fails, in whole or in part, to state a cause of action upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

The Retirement Board's decisions were consistent with the terms of the Retirement Plan, supported by substantial evidence, and otherwise reasonable. Therefore, the decisions were neither arbitrary and capricious nor an abuse of discretion, and they should be upheld.

WHEREFORE, having fully answered Plaintiff's First Amended Complaint, Defendants pray that judgment be entered in their favor and against Plaintiff, that the Court award Defendants all costs and fees incurred by them in defending against Plaintiff's claims, and that the Court grant them such other and further relief as the Court deems just and proper.

**COUNTERCLAIMS SEEKING RECOVERY OF DISABILITY BENEFIT
OVERPAYMENTS OR THE FULL VALUE THEREOF**

Pursuant to Rule 13 of the Federal Rules of Civil Procedure, Defendants the Bert Bell/Pete Rozelle NFL Player Retirement Plan (“Retirement Plan”) and the NFL Player Disability & Neurocognitive Plan (“Disability Plan”), on behalf of their named fiduciaries, the Retirement Board and the Disability Board, respectively, counterclaim against Plaintiff Tyrone Keys to recover disability benefit overpayments that resulted from Keys’ knowing, intentional, and fraudulent statements and omissions.

PARTIES

1. The Retirement Board is the joint Board of Trustees of the Retirement Plan. It has six voting members—three members appointed by the NFL Players Association, and three members appointed by the NFL Management Council. The Retirement Board is the “named fiduciary” and administrator of the Retirement Plan. The terms of the Retirement Plan, and section 502(a)(3) of ERISA, 29 U.S.C. § 1132(a)(3), authorize the Retirement Board to commence legal proceedings on behalf of the Retirement Plan.

2. The Disability Board is the joint Board of Trustees of the Disability Plan. It has six voting members—three members appointed by the NFL Players Association, and three members appointed by the NFL Management Council. The Disability Board is the “named fiduciary” and administrator of the Disability Plan. The terms of the Disability Plan, and section 502(a)(3) of ERISA, 29 U.S.C. § 1132(a)(3), authorize the Disability Board to commence legal proceedings on behalf of the Disability Plan.

3. The day-to-day administration of the Retirement Plan and the Disability Plan takes place out of the NFL Player Benefits Office located in Baltimore, Maryland.

4. Plaintiff and Counter-Defendant Tyrone Keys is a resident of Tampa, Florida. He is a participant in the Retirement Plan and the Disability Plan by virtue of his status as a former professional football player in the NFL.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this counterclaim under ERISA section 502(e)(1), 29 U.S.C. § 1132(e)(1), which gives United States district courts exclusive jurisdiction over actions brought by ERISA fiduciaries.

6. In addition, this counterclaim arises from the same transactions and occurrences at issue in Plaintiff's Amended Complaint in this action, which is also brought pursuant to ERISA. The Court thus has supplemental jurisdiction over this Counterclaim pursuant to 28 U.S.C. § 1367.

7. Venue is proper in this district under ERISA section 502(e)(2), 29 U.S.C. § 1132(e)(2), because Keys resides in Tampa, Florida.

BACKGROUND FACTS

8. The Retirement Plan and the Disability Plan are Taft-Hartley pension and welfare benefit plans created and maintained pursuant to collective bargaining between the NFL Management Council and the NFL Players Association. Under the operative collective bargaining agreement(s), the benefits provided by the Retirement Plan and the Disability Plan come from a limited set of funds set aside for either player salaries or benefits. Therefore, fraud against the Plans not only diverts funds from other deserving participants ("Players"), it also effectively decreases the salaries of all current NFL athletes.

9. At all times relevant here, the Retirement Plan and the Disability Plan provided two types of disability benefits material here: (i) line-of-duty disability (“LOD”) benefits, and (2) total and permanent disability (“T&P”) benefits.

10. LOD benefits are similar to a partial disability benefit; they are awarded to Players who incur a “substantial disablement” arising out of NFL activities.

11. T&P benefits are awarded to Players who are totally and permanently disabled, *i.e.*, substantially prevented from, or substantially unable to engage in, any occupation for remuneration or profit.

COUNT I

Equitable and Declaratory Relief Seeking the Recovery of LOD Overpayments Under Section 502(a)(3) of ERISA

12. In late 1991, Keys applied for LOD (and T&P) benefits.

13. At the time of Keys’ application, and at all times material hereto, the Retirement Plan provided that LOD benefits would be reduced by any workers’ compensation payments received by the Player.

14. For this reason, Keys was informed prior to applying for LOD benefits that he would be required to disclose whether he had applied for workers’ compensation benefits. In addition, the application form that Keys completed and submitted when applying for LOD benefits specifically asked whether Keys had ever applied for or been awarded workers’ compensation benefits.

15. Keys dated his application November 11, 1991, and disclosed in it that he had a *pending* application for workers’ compensation benefits.

16. The Retirement Plan received Keys' LOD application more than a month later, on December 16, 1991.

17. On November 16, 1991—mere days after the date that Keys wrote on his application, and one full month before the Retirement Plan received it—Keys received a workers' compensation award in the amount of at least \$39,000.

18. On January 16, 1992, the Retirement Board approved Keys' application for LOD benefits, and Keys began to receive LOD benefits effective January 1, 1992.

19. Keys continued to receive LOD benefits from the Retirement Plan on a monthly basis through December 1996. The total, gross amount of LOD benefits paid to Keys was approximately \$82,000.

20. In periodic communications to Keys, the Retirement Plan reminded Keys of his continuing obligation to promptly inform the Plan of any workers' compensation awards.

21. Contrary to the instructions he received prior to applying, the requests made in the application form that he completed, and the periodic follow-up communications that he received, Keys never disclosed to the Retirement Plan that he had received workers' compensation benefits at any point during the application process or while receiving LOD benefits.

22. Upon information and belief, Keys misrepresented the status of his workers' compensation award in his LOD application and intentionally failed to disclose his receipt of workers' compensation benefits to prevent the Retirement Plan from applying the required offset to his LOD benefits.

23. Due to Keys' failure to disclose his receipt of workers' compensation benefits, Keys' received an overpayment of LOD benefits from the Retirement Plan in a gross amount of at least \$39,000.

24. Upon information and belief, Keys maintains possession, custody, and/or control over the funds overpaid to him or assets traceable to those funds.

25. At all times material hereto, the Retirement Plan has expressly authorized the Retirement Board to recover benefit overpayments through any method chosen by the Retirement Board.

26. ERISA Section 502(a)(3), 29 U.S.C. § 1132(a)(3), authorizes the Retirement Board to sue to enforce the terms of the Retirement Plan and to obtain other appropriate equitable relief.

27. WHEREFORE, as authorized by the terms of the Retirement Plan and by federal law, the Retirement Plan seeks:

- a. a declaratory judgment that Keys owes the Retirement Plan the full amount of the LOD benefit overpayment, plus pre- and post-judgment interest;
- b. an award of attorneys' fees and costs pursuant to ERISA 502(g);
- and
- c. all other appropriate equitable relief, as determined by the Court, including but not limited to an order requiring Keys to account for the overpayment; an order of restitution requiring Keys to repay the LOD benefits that he wrongfully obtained; and the imposition of a constructive trust over the funds

that Keys wrongfully received from the Retirement Plan, or any and all assets traceable to those funds.

COUNT II

Equitable and Declaratory Relief Seeking the Recovery of T&P Overpayments Under Section 502(a)(3) of ERISA

28. Nearly every year that Keys received LOD benefits, he was examined by a neutral physician selected by the Retirement Board (“Neutral Physician”) to assess his continued eligibility for benefits. Per the Neutral Physician’s report following each examination, the Neutral Physician concluded that Keys was not totally and permanently disabled.

29. Under the operable terms of the Retirement Plan, Keys was entitled to receive LOD payments for a maximum of 60 months.

30. In 1996, the year that Keys’ LOD benefits expired, Keys asked the Retirement Plan to reclassify his LOD benefits to the higher-paying T&P benefits. But, because the Retirement Plan’s Neutral Physicians annually reported that Keys was capable of employment, on January 16, 1997, the Retirement Board determined that Keys was not totally and permanently disabled, and it denied his request.

31. On May 7, 2002, Keys was in a car accident.

32. Three days after the car accident, a chiropractor named Dr. Richard Shaker examined Keys and referred him to an orthopedic surgeon named Dr. Chet Janecki.

33. In August 2003, Dr. Janecki issued a report (“Janecki Report”) stating, among other things, that Keys’ low back, leg, and knee pain, and the treatments related to

those impairments, were the direct result of injuries that Keys sustained during the May 7, 2002 car accident.

34. On or about September 16, 2003, Keys reapplied for T&P benefits.

35. In his T&P application, Keys attributed his disability to neck, low back, shoulder, and knee injuries—largely the same injuries described in the Janecki Report, which Dr. Janecki had attributed to the May 7, 2002 car accident.

36. When asked in the T&P application to “[d]escribe all accidents, injuries, or illnesses that did not result from NFL Football (for example, auto accidents) and may have caused or contributed in any way to any of the above conditions,” Keys did not disclose the May 7, 2002 car accident. Instead, Keys stated that “[a]ll injuries were the direct result of pro football unfortunately.”

37. On the final page of the T&P application, Keys executed the following certification:

“All of the information provided on or with this application is, to the best of my knowledge, true, correct, and complete. I certify that any and all documents or information attached to or enclosed with this application are, to the best of my knowledge, true, correct, and complete. I recognize that I may be subject to loss of benefits and to other penalties and sanctions under law if I have made any false or misleading statements or omissions.”

38. Later, in support of his application, Keys submitted certain medical records. Among the records that Keys submitted was the *last page* of the Janecki Report. Upon information and belief, Keys intentionally provided only that final page of the Janecki Report because it described Keys’ injuries and ongoing treatments, but omitted any mention of the May 7, 2002 car accident and Dr. Janecki’s conclusion (stated

elsewhere in the Janecki Report) that the car accident caused or contributed to Keys' impairments. Upon information and belief, Keys knew that Dr. Janecki's statement in the Janecki Report linking the May 7, 2002 car accident to his disabilities would adversely impact his application for T&P benefits under the Retirement Plan.

39. Ultimately, based in part on Keys' application and the misleading and/or incomplete medical records he submitted, the Retirement Plan approved Keys' application for T&P benefits. On April 7, 2004, Keys was awarded, effective January 1, 2004, a category of T&P benefits called Football Degenerative/Inactive A benefits based on the (mistaken) conclusion that his total and permanent disability was caused exclusively by League football activities.

40. In 2011, Keys' T&P benefits were terminated.

41. In 2012, Keys reapplied for T&P benefits. In his 2012 application, Keys once again failed to disclose the May 7, 2002 car accident when asked to describe any accidents that may have contributed to his disabling injuries.

42. In 2016, the Retirement Board reviewed Keys' file following the Retirement Board's requests for information from the Social Security Administration ("SSA") and the Internal Revenue Service, and Keys' assertion that he had previously provided the requested documents and information. During the course of that review, the Retirement Board obtained documentation that Keys submitted to the SSA in connection with his separate application(s) for SSA disability insurance benefits. The documentation revealed a number of statements that Keys made to the SSA that contradicted his representations to the Retirement Plan and the Retirement Board. For example:

a. The SSA documentation showed that Keys represented to the SSA that he became disabled and *ceased performing gainful activity on April 1, 2007*. That date was almost *four years after* Keys applied for T&P benefits on the alleged basis that he was unable to engage in any gainful employment.

b. The SSA documentation revealed that, at other times, Keys represented to the SSA that he *worked 6 hours per day from 1993 through June 2009* (Keys was not consistent in his representations to SSA). That statement conflicted with Keys' representations in his September 16, 2003 T&P application that he was "unable to sit for more than 10 minutes without having to stand..., unable to stand for no more than 5 minutes", and "unable to complete a work day because of having to constant alternate between sitting or standing every few minutes to relieve the pain."

c. The SSA documentation contained a *complete* copy of the Janecki Report. After reviewing the complete copy of the Janecki Report, the Retirement Board discovered that Keys had intentionally withheld several pages of the Janecki Report that linked his impairments and ongoing treatment to the May 7, 2002 car accident. The Retirement Board also discovered that the previously undisclosed portion of the Janecki Report contradicted a later report by Dr. Janecki that Keys did provide to the Retirement Board, which stated that Keys' injuries were the result of NFL football. When asked to explain the inconsistency between Dr. Janecki's reports, Keys stated that Dr. Janecki provided inaccurate and

contradictory reports in furtherance of “Mr. Keys’ efforts to claim insurance money.”

43. In 2017, the Retirement Board also received documents from Keys that revealed further inconsistencies in his disability applications. For instance, Keys submitted a report from Dr. Shaker that—when reviewed in combination with the Janecki Report—clearly established that the chiropractic therapy that Keys began in May 2010, just three days after the car accident, was necessary and related to the car accident. That conflicted with Keys’ representations that he was receiving that same therapy to alleviate football-related injuries.

44. On August 16, 2017, the Retirement Board reviewed Keys’ entire file and issued an initial decision regarding his entitlement to T&P benefits. The Retirement Board concluded, among other things:

a. Keys’ T&P application fraudulently omitted material information concerning the nature and cause of his claimed impairments;

b. Keys was never entitled to Football Degenerative/Inactive A benefits, but rather a lesser-paying category of T&P benefits known as Inactive/Inactive B;

c. Keys received an overpayment of T&P benefits representing the difference between the Football Degenerative/Inactive A T&P benefits Keys received, and the Inactive/Inactive B T&P benefits he was arguably entitled to; and

d. to partially recover the overpayment, all further Inactive/Inactive B T&P benefit payments to Keys would be suspended.

45. A true and correct copy of the Retirement Board's initial decision letter is attached as **Exhibit 1**, and the facts, findings, and conclusions stated therein are expressly incorporated here by reference.

46. Keys was given an opportunity to appeal the Retirement Board's decision, and he did so on February 14, 2018.

47. On February 22, 2018, the Retirement Board denied Keys' appeal, and informed Keys of the Retirement Board's final decision by letter dated February 26, 2018. A true and correct copy of the Retirement Board's final decision letter is attached as **Exhibit 2**, and the facts, findings, and conclusions stated therein are expressly incorporated here by reference.

48. The Retirement Board's decision is supported by substantial evidence and should be upheld as a matter of law.

49. Pursuant to the Retirement Board's decision, Keys received a substantial overpayment of T&P benefits from the Retirement Plan and the Disability Plan, specifically:

a. from January 2004 through February 2017, Keys received a gross amount of \$468,042.90 in T&P disability benefits from the Retirement Plan, and a gross amount of \$744,884.00 in T&P disability benefits from the Disability Plan; but

b. if Keys had received Inactive/Inactive B benefits from January 2004 through February 2017, as the Retirement Board determined was appropriate, Keys would have received a gross amount of \$381,815.08 in T&P benefits from the Retirement Plan, and nothing from the Disability Plan; therefore

c. As of March 1, 2017, the Retirement Plan overpaid Keys in the amount of \$86,227.82, exclusive of interest, and the Disability Plan overpaid Keys in the amount of \$744,884.00, exclusive of interest, for an overpayment in the total amount of \$831,111.82, exclusive of interest.¹

50. Beginning March 1, 2017, the overpayment from the Retirement Plan has decreased each month because Mr. Keys is no longer receiving Inactive/Inactive B benefits. As of June 1, 2019, the sum total of the Retirement Plan's overpayment to Mr. Keys equals \$34,716.78, exclusive of interest. The amount of the overpayment from the Disability Plan remains \$744,884.00, exclusive of interest.

51. Upon information and belief, Keys maintains possession, custody, and/or control over the funds overpaid to him or assets traceable to those funds.

52. At all times material hereto, the Retirement Plan has expressly authorized the Retirement Board to recover benefit overpayments through any method chosen by the Retirement Board.

¹ The Retirement Board's August 30, 2017 decision letter stated that Keys was overpaid in the amount of \$831,488.28. Further review of the Plan's records indicates that Keys was actually overpaid in the amount of \$831,111.82.

53. At all times material hereto, the Disability Plan has expressly authorized the Disability Board to recover benefit overpayments through any method chosen by the Disability Board.

54. ERISA Section 502(a)(3), 29 U.S.C. § 1132(a)(3), authorizes the Retirement Board and the Disability Board to sue to enforce the terms of the Retirement Plan and the Disability Plan, respectively, and to obtain other, appropriate equitable relief.

55. WHEREFORE, as authorized by the terms of the Retirement Plan and by federal law, the Retirement Plan seeks:

- a. a declaratory judgment that Keys owes the Retirement Plan \$34,716.78, plus pre- and post-judgment interest;
- b. an award of attorneys' fees and costs pursuant to ERISA 502(g); and
- c. all other appropriate equitable relief, as determined by the Court, including but not limited to an order requiring Keys to account for the overpayment; an order of restitution requiring Keys to repay the T&P benefits that he wrongfully obtained; and the imposition of a constructive trust over the funds that Keys wrongfully received from the Retirement Plan, or any and all assets traceable to those funds.

56. AND WHEREFORE, as authorized by the terms of the Disability Plan and by federal law, the Disability Plan seeks:

- a. a declaratory judgment that Keys owes the Disability Plan \$744,884.00, plus pre- and post-judgment interest;

b. an award of attorneys' fees and costs pursuant to ERISA 502(g);
and

c. all other appropriate equitable relief, as determined by the Court, including but not limited to an order requiring Keys to account for the overpayment; an order of restitution requiring Keys to repay the T&P benefits that he wrongfully obtained; and the imposition of a constructive trust over the funds that Keys wrongfully received from the Disability Plan, or any and all assets traceable to those funds.

COUNT III

Unjust Enrichment Under ERISA and/or Federal Common Law

57. The Plans re-allege and incorporate by reference the allegations set forth in paragraphs 1 through 56.

58. In addition to, or as an alternative to, the above claims brought by the Plans against Keys under section 502(a)(3) of ERISA, Keys is personally liable to the Plans for the full amount of the LOD and T&P benefits overpaid to him due to his fraud under the federal common law theory of unjust enrichment.

59. The Plans have conferred substantial benefits upon Keys to which he was not justly entitled; Keys has appreciated those benefits; and, under these circumstances, it would be unjust and inequitable for Keys to retain those benefits without compensating the Plans for the full value thereof.

60. WHEREFORE, the Retirement Plan seeks:

- a. a judgment against Keys for the full amount of the LOD benefits overpayment, plus pre- and post-judgment interest;
- b. a judgment against Keys for the full amount of the T&P overpayment (\$34,716.78 as of June 1, 2019), plus pre- and post-judgment interest; and
- c. any additional relief to which it might justly be entitled.

61. AND WHEREFORE, the Disability Plan seeks:

- a. a judgment against Keys for the full amount of the T&P overpayment (\$744,884.00 as of June 1, 2019), plus pre- and post-judgment interest; and
- b. any additional relief to which it might justly be entitled.

Dated: June 24, 2019

By:



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